

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GEORGE W. BROWN,	:	08 CV 1093 (LMK)
Plaintiff(s),	:	<b><u>VERIFIED ANSWER</u></b>
- against -	:	Assigned to: Judge Lawrence M. McKenna
THE BROOKDALE HOSPITAL MEDICAL CENTER,	:	
SANJEEV RAJPAL, M.D., CLASS SURGERY	:	
BROOKLYN GROUP, P.C., THE MOUNT SINAI	:	
HOSPITAL, HOWARD CHOI, M.D., DANIELLE	:	
PERRET, M.D., BRIAN RIORDAN, M.D., NEW	:	
FRANKLIN REHABILITATION & HEALTH CARE	:	
FACILITY, LLC, FRANKLIN CENTER FOR	:	
REHABILITATION & NURSING, INC., FRANKLIN	:	
CENTER FOR REHABILITATION & NURSING,	:	
ISRAEL SHERMAN, WILLIAM DUKE, M.D.,	:	
HILLSIDE MANOR COMPREHENSIVE CARE	:	
CENTER, and THE NEW YORK HOSPITAL	:	
MEDICAL CENTER OF QUEENS,	:	
Defendants.	:	
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Defendants, THE MOUNT SINAI HOSPITAL and HOWARD CHOI, M.D., by their attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, respond to the allegations in the Complaint as follows:

**AS AND FOR AN ANSWER AS TO NATURE OF THE CASE**

1. Deny the allegations contained in paragraphs "1", "2", "3", "4" and "6".
2. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "5", "7" and "8" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO JURISDICTION AND VENUE AND PARTIES**

3. Deny the allegations contained in paragraphs "9", "10", "64", "65" and "73" in the form alleged and refer all questions of law to this Honorable Court.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "74", "75", "76" and "77" and refer all questions of law to this Honorable Court.

5. Deny the allegations contained in paragraph "62" in the form alleged except admit that THE MOUNT SINAI HOSPITAL is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York and refer all questions of law to this Honorable Court.

6. Deny the allegations contained in paragraph "63" in the form alleged except admit that THE MOUNT SINAI HOSPITAL maintained appropriate services incident to its function as a hospital and refer all questions of law to this Honorable Court.

7. Deny the allegations contained in paragraph "66" in the form alleged except admit that plaintiff, George W. Brown was a patient of The Mount Sinai Hospital.

8. Deny the allegations contained in paragraph "68" in the form alleged except admit that plaintiff George W. Brown was a patient of Howard Choi, M.D.

9. Deny the allegations contained in paragraph "70" in the form alleged except admit that plaintiff George W. Brown was a patient of Danielle Perret, M.D.

10. Deny the allegations contained in paragraph "72" in the form alleged except admit that plaintiff George W. Brown was a patient of Brian Riordan, M.D.

**AS AND FOR AN ANSWER AS TO GENERAL FACTUAL BACKGROUND**

11. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "78", "80" and "81" and refer all questions of law to this Honorable Court.
12. Deny the allegations contained in paragraph "79".

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION  
& NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D.**

13. In response to paragraph "82", repeat each admission or denial made herein as though fully set forth hereat.
14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "83" and "84" and refer all questions of law to this Honorable Court.
15. Deny knowledge and information sufficient to form a belief as to the truth of the allegations and deny as improperly pleaded evidentiary material as to paragraph "85" and refer all questions of law to this Honorable Court.
16. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96" and "97" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION &  
NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D., PURSUANT  
TO 42 U.S.C. §1395i-3; 42 U.S.C. §1396r and 42 CFR Part 483, et seq.**

17. In response to paragraph "98", repeat each admission or denial made herein as though fully set forth hereat.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "99", "100", "101", "102", "103", "104", "105", "106", "107" and "108" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION  
AS TO NEW FRANKLIN REHABILITATION & HEALTH CARE  
FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION &  
NURSING, INC., FRANKLIN CENTER FOR REHABILITATION &  
NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D., UNDER  
NEW YORK PUBLIC HEALTH LAW §2801-d and 10 NYCRR §415.12**

19. In response to paragraph "109", repeat each admission or denial made herein as though fully set forth hereat.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "110", "111", "112", "113", "114", "115", "116", "117", "118" and "119" and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE  
OF ACTION AS TO THE BROOKDALE HOSPITAL  
MEDICAL CENTER and SANJEEV RAJPAL, M.D.**

21. In response to paragraph "120", repeat each admission or denial made herein as though fully set forth hereat.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "121", "122", "123", "124" and "125" and refer all questions of law to this Honorable Court.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "126", "127", "128" and "129" refer all questions of law to this Honorable Court.

24. Deny the allegations contained in paragraph "130".

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE  
OF ACTION AS TO SANJEEV RAJPAL, M.D.  
and CLASS SURGERY BROOKLYN GROUP, P.C.**

25. In response to paragraph "131", repeat each admission or denial made herein as though fully set forth hereat.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "132", "133", "134", "135", "136" and "137" and refer all questions of law to this Honorable Court.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "138", "139", "140" and "141" refer all questions of law to this Honorable Court.

28. Deny the allegations contained in paragraph "142".

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION  
AS TO THE MOUNT SINAI HOSPITAL, HOWARD CHOI, M.D.,  
DANIELLE PERRET, M.D. and BRIAN RIORDAN, M.D.**

29. In response to paragraph "143", repeat each admission or denial made herein as though fully set forth hereat.

30. Deny the allegations contained in paragraphs "144", "145" and "148" in the form alleged and refer all questions of law to this Honorable Court.

31. Deny in the form alleged and deny as improperly pleaded evidentiary material as to paragraphs "146" and "147" and refer all questions of law to this Honorable Court.

32. Deny the allegations contained in paragraphs "149", "150", "151", "152" and "153".

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE  
OF ACTION AS TO WILLIAM DUKE, M.D. and HILLSIDE  
MANOR COMPREHENSIVE CARE CENTER**

33. In response to paragraph "154", repeat each admission or denial made herein as though fully set forth hereat.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "155", "156", "157", "158", "159", "160" and "162" and refer all questions of law to this Honorable Court.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "161", "163" and "164" and refer all questions of law to this Honorable Court.

36. Deny the allegations contained in paragraph "165".

**AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF  
ACTION AS TO THE NEW YORK HOSPITAL MEDICAL  
CENTER OF QUEENS and WILLIAM DUKE, M.D.**

37. In response to paragraph "166", repeat each admission or denial made herein as though fully set forth hereat.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "167", "168", "169", "170", "171" and "172" and refer all questions of law to this Honorable Court.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations and deny the allegations in the form alleged as to paragraphs "173", "174", "175" and "176" and refer all questions of law to this Honorable Court.

40. Deny the allegations contained in paragraph "177".

**AS AND FOR AN ANSWER AS TO DAMAGES**

41. Deny the allegations contained in paragraph "178".

**AS AND FOR AN ANSWER AS TO CERTIFICATE OF MERIT**

42. Deny the allegations contained in paragraph "179" in the form alleged and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO DEMAND FOR JURY TRIAL**

43. Deny the allegations contained in paragraph "180" in the form alleged and refer all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER AS TO PRAYER FOR RELIEF**

44. Deny the allegations contained in paragraphs "1" and "2".

**AS AND FOR A FIRST SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

45. Pursuant to CPLR Article 16, the liability, if any, of the answering defendants, for non-economic loss shall not exceed their equitable shares of liability.

**AS AND FOR A SECOND, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

46. That the injuries of the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

**AS AND FOR A THIRD, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS, ALLEGE AS FOLLOWS**

47. The Complaint fails to state a cause of action upon which relief may be granted.

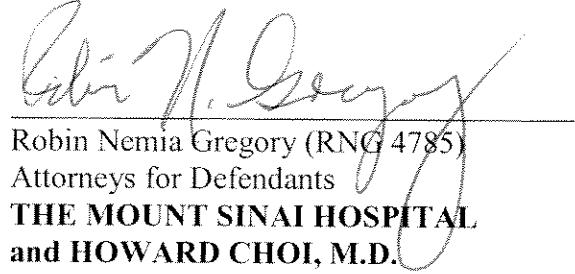
**WHEREFORE**, defendants, THE MOUNT SINAI HOSPITAL and HOWARD CHOI, M.D. demand judgment dismissing the complaint together with the costs and disbursements of this action.

Dated: New York, New York  
March 11, 2008

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:

  
Robin Nemia Gregory (RNG 4785)

Attorneys for Defendants

**THE MOUNT SINAI HOSPITAL  
and HOWARD CHOI, M.D.**

150 East 42nd Street  
New York, New York 10017-5639  
(212) 490-3000  
File No. 22930.00949

TO: LEAHEY & JOHNSON, P.C.  
Attorneys for Plaintiff(s)  
120 Wall Street, Suite 2220  
New York, New York 10005  
(212) 269-7308

Re: GEORGE W. BROWN, v. THE BROOKDALE HOSPITAL MEDICAL CENTER, SANJEEV RAJPAL, M.D., CLASS SURGERY BROOKLYN GROUP, P.C., THE MOUNT SINAI HOSPITAL, HOWARD CHOI, M.D., DANIELLE PERRET, M.D., BRIAN RIORDAN, M.D., NEW FRANKLYN REHABILITATION & HEALTH CARE FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION & NURSING, INC, ISRAEL SHERMAN, WILLIAM DUKE, M.D., HILLSIDE MANOR COMPREHENSIVE CARE CENTER, and THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS

YOUR FILE NO: 22930.00949

**CORPORATE VERIFICATION**

STATE OF NEW YORK )  
ss:  
COUNTY OF NEW YORK )

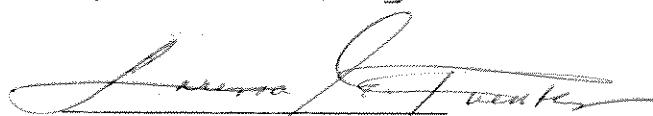
**MICHAEL G. MACDONALD**, being duly sworn, deposes and says that deponent is Executive Vice President and General Counsel of THE MOUNT SINAI HOSPITAL, the corporation named in the within action; that deponent has read the foregoing Answer and knows the contents thereof; that same is true to deponent's knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because THE MOUNT SINAI HOSPITAL is a domestic corporation. Deponent is an officer thereof, to wit, its Executive Vice President and General Counsel. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Records and files kept by Mount Sinai Hospital during the normal course of business as a Hospital.



Michael G. Macdonald  
Executive Vice President  
and General Counsel

Sworn to before me this 20<sup>th</sup>  
day of March, 2008



NOTARY PUBLIC

Lorraine M. Fuentes  
Notary Public, State Of New York  
Qualified in New York County  
LIC. #01RUB098819  
Commission Expires Sept. 22, 2011

## AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF NEW YORK )

ETHEL WESTPHAL, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Warwick, New York.

That on the 11<sup>th</sup> day of March, 2008, deponent served the within **VERIFIED ANSWER** upon:

LEAHEY & JOHNSON, P.C.  
Attorneys for Plaintiff(s)  
120 Wall Street, Suite 2220  
New York, New York 10005

at the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed envelope, in an official United States Postal depository under the exclusive care and custody of the United States Post Office within the State of New York.

Ethel Westphal  
ETHEL WESTPHAL

Sworn to before me this  
11<sup>th</sup> day of March, 2008

John W. Webb

## Notary Public

ERAIDA ROBLEDO  
NOTARY PUBLIC, State of New York  
No. 01RO5037889  
Qualified in Bronx County  
Commission Expires January 17, 2011